APPEAL NO. 93316

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8309-1.01-11.10 (Vernon Supp. 1993) (1989 Act). A contested case hearing was held on March 29, 1993, in (city), Texas, before hearing officer (hearing officer). The appellant, hereinafter carrier, appeals the hearing officer's determination that the respondent, hereinafter claimant, timely reported to his employer an injury which occurred on or about (date of injury). The claimant essentially states that the evidence supports the hearing officer's determination and prays that this panel affirm. To the extent that claimant appears to challenge the hearing officer's finding that he would not have had good cause for failure to timely report an injury, we find that claimant's pleading cannot be considered a timely cross-appeal. *See* Texas Workers' Compensation Commission Appeal No. 92109, decided May 4, 1992.

DECISION

We affirm the decision and order of the hearing officer.

The claimant testified that he was employed by (employer) as a fleet mechanic and general painter. On or about (date of injury), he said he was assisting the superintendent, (Mr. L), in unloading a pressure washer from a truck. He said the washer was a large piece of equipment and in the past he had seen four or five people unload it. When he grabbed the handle and lifted the washer he said he felt a sharp pain around his back from his hip area; he said he yelled out, hobbled away, holding his back, and said shrilly to Mr. L, "G-- d-- it, M, you done f----- me up." He said Mr. L only grinned and did not say anything. The next day claimant said he approached employer's owner, (Mr. G), and told him he had hurt his back. He said Mr. G told him to report the injury, but claimant replied, "[l]et's wait and see what it does."

The claimant testified, and medical records reflect, that he had gone to his doctor, (Dr. T) in June of 1992 because of high blood pressure and problems with his medication; he did not report, nor was he treated for, hip or back pain. After the July incident he said his pain got increasingly more severe; on September 21st, when he was exchanging batteries in two trucks and felt pain in his hip area, he said he decided he was going to have to quit his job. He went home and rested but when the pain got worse he went back to Dr. T. On September 28th he said Dr. T informed him he had a right inguinal hernia and asked whether he had picked up anything heavy. At that time, he said, he remembered the incident with the pressure washer. He thereafter talked to (Mr. C), employer's safety director, and told him about the injury.

Mr. G and Mr. C testified that they were unaware claimant had suffered a job-related injury until September 29th. Mr. C said he is the person to whom injuries were supposed to be reported, both by employees and supervisors receiving reports of injury, and he had not been told of any injury earlier. Both men said they had talked with Mr. L, who said he remembered lifting the pressure washer with claimant, but did not remember claimant

cursing or indicating he was injured. Mr. G also denied that claimant had told him about an injury within two days of July 2nd. Mr. G said it was his understanding that claimant had resigned because of personal problems, including back taxes owed to the Internal Revenue Service, and he said he remembered claimant telling him he needed $5,000. Claimant acknowledged this conversation had taken place, but said he had made the statement jokingly.

The claimant said he had previously had a hernia some thirty years before, and that he had had a hip problem in 1990. He said he had attributed the pain he was having to the hip problem until Dr. T diagnosed a hernia and recommended surgery. He testified at the hearing that he knew at the time of the July 1st incident that he had hurt himself; however, September 28th was the first he knew that he had a hernia.

The hearing officer made findings of fact that claimant sustained a hernia injury while assisting his supervisor in unloading a pressure washer from a truck and that within 30 days of sustaining such injury the claimant informed Mr. L and Mr. G of the general nature of his injury and the fact that it was work-related. (She also found that within 30 days of the injury claimant knew or should have known his injury was not trivial, and concluded that if claimant failed to timely report his July 1st injury, he did not have good cause for failing to timely report.) In its appeal, the carrier contends that the overwhelming and great weight of the evidence indicates that claimant waited until September 28, 1992 to report his injury, that such notification was untimely, and that claimant lacked good cause for failing to timely report.

Under the provisions of Article 8308-5.01, an employee must notify his employer of an injury not later than the 30th day after the date on which the injury occurs. The effect of failure to notify is to relieve the employer or its carrier from liability unless (1) the employer or his representative has actual knowledge of the injury; (2) good cause exists for the failure to notify, or (3) the employer or its carrier does not contest the claim. Article 8308-5.02.

The purpose of the notice statute is to give the insurer an opportunity immediately to investigate the facts surrounding an injury. DeAnda v. Home Insurance Co., 618 S.W.2d 529 (Tex. 1980). This purpose can be fulfilled without the need of any particular form of notice; the employer need only know the general nature of the injury and the fact that it is job related. Id. at 532-3. In her decision the hearing officer cited this requirement and stated that "[s]ince claimant's statement to [Mr. L] was made immediately following a physically strenuous task, and since claimant was holding the injured area of his person while making this statement, this statement was sufficient to constitute a report of injury, and it is not relevant that the report was made in a highly unusual manner." The hearing officer further noted that while the carrier might argue that claimant's report was inadequate for its apparent failure to convey the general nature of the injury (i.e., a hernia), the claimant was not aware of that fact until September 28th. We would note that courts have held that a claimant's

notice need not be governed by any strict rules of formality, nor must an employee know the correct medical name or proper diagnosis of the injury or disease. Select Insurance Co. v. Patton 506 S.W.2d 677 (Tex. Civ. App.-Amarillo 1974, writ ref'd n.r.e.).

While there was evidence in the record, in the form of claimant's testimony that he informed Mr. G of his injury within two days of its occurrence, which could support a finding of timely notice of injury, we believe the facts as stated in the hearing officer's findings of fact more nearly describe actual knowledge through Mr. L on the part of the employer. Courts have held that (except in cases of "spectacular injuries," the viewing of which would constitute knowledge as a matter of law) evidence can present a fact issue as to whether the employer had facts that would lead a reasonable person to conclude that a compensable injury had been sustained by an employee. Miller v. Texas Employers' Insurance Association, 488 S.W.2d 489 (Tex. Civ. App.-Beaumont 1972, writ ref'd n.r.e.). Based upon the hearing officer's factual determination, that would appear to be the situation in this case. *See* Texas Workers' Compensation Commission Appeal No. 92294, decided August 14, 1992. We will affirm the judgment of the hearing officer where it can be sustained on any reasonable theory supported by the evidence authorized by law. Daylin v. Juarez, 766 S.W.2d 347 (Tex. App.-El Paso 1989, writ denied). *See also* Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991, wherein we stated with regard to a hearing officer's finding on injury (as opposed to occupational disease), "each theory is reasonable, is supported by the evidence, and may be used to uphold the judgment in this case."

We accordingly affirm the hearing officer's decision and order.

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Lynda H. Nesenholtz
Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Thomas A. Knapp
Appeals Judge